

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File No. EB-02-TC-011
)	CUID No. CA0248 (Calabasas)
Falcon Cablevision)	
)	
Petition for Reconsideration)	

ORDER ON RECONSIDERATION

Adopted: July 16, 2002

Released: July 17, 2002

By the Chief, Enforcement Bureau:¹

1. In this Order we consider a petition for reconsideration ("Petition") of Order, DA 98-1221² ("Prior Order"), filed with the Federal Communications Commission ("Commission") by the above-referenced operator ("Operator").³ The Prior Order resolved a complaint against Operator's October 1, 1997 rate increase for its cable programming services tier ("CPST") in the community referenced above. In this Order, we deny Operator's Petition and calculate Operator's refund liability.

2. Under the provisions of the Communications Act⁴ that were in effect at the time the complaints were filed, the Commission is authorized to review the CPST rates of cable systems not subject to effective competition to ensure that rates charged are not unreasonable. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act")⁵ and the Commission's rules required the Commission to review CPST rates upon the filing of a valid complaint by a subscriber or local franchising authority ("LFA"). The Telecommunications Act of 1996 ("1996 Act"),⁶ and the Commission's rules implementing the legislation ("Interim Rules"),⁷ require that a complaint against the CPST rate be filed with the Commission by an LFA that has received more than one subscriber complaint. The filing of a valid

¹ Effective March 25, 2002, the Commission transferred responsibility for resolving cable programming services tier rate complaints from the former Cable Services Bureau to the Enforcement Bureau. *See Establishment of the Media Bureau, the Wireline Competition Bureau and the Consumer and Governmental Affairs Bureau, Reorganization of the International Bureau and Other Organizational Changes*, FCC 02-10, 17 FCC Rcd 4672 (2002).

² *In the Matter of Marcus Cable Associates*, DA 98-1221, 13 FCC Rcd 17174 (CSB 1998).

³ The term "Operator" includes Operator's predecessors and successors in interest.

⁴ 47 U.S.C. §543(c) (1996).

⁵ Pub. L. No. 102-385, 106 Stat. 1460 (1992).

⁶ Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁷ *See Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 11 FCC Rcd 5937 (1996).

complaint triggers an obligation upon the cable operator to file a justification of its CPST rates.⁸ If the Commission finds the rate to be unreasonable, it shall determine the correct rate and any refund liability.⁹

3. Operators must use the FCC Form 1200 series to justify rates for the period beginning May 15, 1994.¹⁰ Cable operators may justify quarterly rate increases based on the addition and deletion of channels, changes in certain external costs and inflation, by filing FCC Form 1210.¹¹ Operators may justify their rates on an annual basis using FCC Form 1240 to reflect reasonably certain and quantifiable changes in external costs, inflation, and the number of regulated channels that are projected for the twelve months following the rate change.¹² Any incurred cost that is not projected may be accrued with interest and added to rates at a later time.¹³

4. In response to the referenced complaint, Operator filed its rate justification as an unregulated operator pursuant the *Thirteenth Reconsideration Order*.¹⁴ In the *Thirteenth Reconsideration Order*, the Commission decided to end regulatory review of an operator's entire rate structure if no prior complaints had been filed against the operator's CPST rates. An operator may file with the Commission as an unregulated operator using only an FCC Form 1240 to justify its current CPST rate increase, rather than filing an FCC Form 1200 and updating that form. In accordance with the FCC Form 1240 Instructions the operator should enter, on Line A1 (Current Maximum Permitted Rate) of the FCC Form 1240, the rate it was charging prior to the rate increase that triggered the complaint.¹⁵

5. In its Petition, Operator asserts that, due to an error it made when calculating its maximum permitted rate ("MPR") for an earlier time period, the actual rate entered on Line A1 should have been higher. Operator argues that we should allow Operator to increase its rate to account for this earlier omission. We disagree. The purpose of ending regulatory review of an operator's entire rate structure was to reduce the regulatory burden on the operator. Operator took advantage of this methodology to avoid the burden of having the Commission review its entire rate structure beginning with its initial FCC Form 1200 rates. We cannot assume that the actual CPST rate that Operator entered as the starting rate on its FCC Form 1240 was correctly calculated using the FCC Form 1200 as a starting point with the exception of Operator's one claimed error. Had the Cable Services Bureau reviewed Operator's entire rate structure, Operator might have qualified for an adjustment increasing its MPR. On the other hand, Operator might have suffered an additional CPST rate reduction based on that review. Operator cannot pick and choose pieces of alternate

⁸ See Section 76.956 of the Commission's rules, 47 C.F.R. §76.956.

⁹ See Section 76.957 of the Commission's rules, 47 C.F.R. §76.957.

¹⁰ See Section 76.922 of the Commission's Rules, 47 C.F.R. § 76.922.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ See *Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation, Thirteenth Order on Reconsideration*, MM Docket No. 92-266, 11 FCC Rcd 388 (1996).

¹⁵ FCC Form 1240 Instructions at p. 12 (July 1996).

rate methodologies. If Operator chooses the advantages of a particular methodology over another, it must also accept any concomitant consequences. Therefore, we deny Operator's Petition.

6. Because Operator never submitted a refund plan in response to the Prior Order, we calculate Operator's refund liability as follows: For the period from October 3, 1997 (the date the first valid complaint was filed with the LFA) through September 30, 1998, we calculate an overcharge of \$0.96 per month per subscriber. Operator's actual CPST rate for this period was \$8.41 and its MPR was \$7.45. Our total calculation, including five percent franchise fees plus interest on the overcharges and franchise fees through July 31, 2002, equals \$16,760.65. We order Operator to refund this amount, plus any additional interest accrued to the date of refund, to its CPST subscribers within 60 days of the release of this Order.

7. Accordingly, IT IS ORDERED, pursuant to Section 1.106 of the Commission's rules, 47 C.F.R. §1.106, that Operator's Petition for Reconsideration IS DENIED.

8. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator shall refund to subscribers in the franchise area referenced above the total amount of \$16,760.65, plus any additional interest that accrues between July 31, 2002 and the date of refund, within 60 days of the release of this Order.

9. IT IS FURTHER ORDERED, pursuant to Sections 0.111, 0.311 and 76.962 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311 and §76.962, that Operator file a certificate of compliance with the Chief, Enforcement Bureau, within 90 days of the release of this Order certifying its compliance with this Order.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau